Supreme Court, U.S.
FILED

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No._____OFFICE OF THE CLERK

In The
Supreme Court of the United States of America

Robert Christopher Kettenburg, Petitioner

vs. **Class Action**

The United States Federal Government, Respondents

On Petition for Writ of Certiorari to The United States Court of Appeals for the 2nd Circuit

PETITION FOR WRIT OF CERTIORARI

Robert Christopher Kettenburg Pro Se, Petitioner
6594 Dysinger Road #17
Lockport, New York 14094
(716) 433-8611
http://www.angelfire.com/ny5/robkettenburg

32 pp

QUESTIONS PRESENTED FOR REVIEW

1.) Is it legal for the United States Federal Government to carry out incredibly brutal acts of violence made to look like accidents against honorably discharged soldiers who have never been formally charged with committing any crime, so they can place us in surgery and stick a microchip in us for tracking purposes via global positioning satellite (GPS) tracking, and then turn around and use that technology in conjunction with wire tapping, among other things, to recreate the prison environment - with no due process, a direct violation of the 5th, 6th, and 14th Amendments to the U.S. Constitution? Petitioner completed his Master's thesis/directed research project at The University of Louisville in 1994 on the nature and evolution of the criminal penal justice system, and maintains that the federal governement uses aforementioned technology, in conjunction with wire tapping, to recreate the prison environment. Petitioner maintains that respondents carried out an incredibly brutal act of violence against him in the form of a car wreck so they could place him in surgery at The University of Louisville hospital and stick a microchip in him for tracking purposes and then turn around and use this technology to recreate the prison environment. Petitioner maintains that he has been a federal prisoner since the day of the car wreck, July 26th, 1988, and has never been arrested, never committed any crimes, never broken any laws other than minor traffic violations, and never formally been charged with any wrong doing - ever. Petitioner is 36 years old. This is a direct violation of the 6th Amendment to the U.S. Constitution, and the petitioner prays that this Court rule so.

2.) Petitioner wishes to set another legal precedent. Until now, Judges have dismissed petitioner's claims on the legal grounds that the technology decsribed by petitioner is 'imaginary,' 'delusional,' or 'incredible.' Or "There is no legal or factual basis to which the petitioner may make a claim." Petitioner prays for Court to rule that said technologies are not imaginary, and do in fact exist. Indeed, U.S. Patent Number 5,629,678 was granted for

this very technology and there are even companies on the NASDAQ stock exchange, ADSX - Applied Digital Sollutions (www.destron-fearing.com), for example, who's sole purpose is to make implantable microchips that allow for tracking via global positioning satellite technology. Petitioner has included more proof of his claims in exhibit D located at App. 23-28 in the appendix to this petition.

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Petition for a Writ of Certiorari
to the Supreme Court of The United States of America

Robert Christopher Kettenburg respectfully petitions for a writ of certiorari to review the judgement of the U.S. Court of Appeals for the 2nd Circuit.

OPINIONS BELOW

- The opinion of the United States Court of Appeals for the 2nd Circuit is contained in the Appendix (App. 1-2) and is unpublished.

- The opinion of the United States District Court for The Western District of New York at Buffalo is contained in the Appendix (App. 3-5) and is unpublished.

STATEMENT OF THE BASIS FOR JURISDICTION

- Jurisdiction of this Court is invoked under Title 28 of the United States Code, Section 1254.

- The U.S. Court of Appeals for the 2nd Circuit decided petitioner's case on May 30, 2002.

- A timely petition for rehearing was denied by the U.S. Court of Appeals for the 2nd Circuit on August 14, 2002, and a copy of the order denying rehearing is contained in the Appendix (App. 10).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- The First Amendment to the Constitution of the United States of America
- The Fourth Amendment to the Constitution of the United States of America
- The Fifth Amendment to the Constitution of the United States of America
- The Sixth Amendment to the Constitution of the United States of America
- The Fourteenth Amendment to the Constitution of the United States of America
- Title 18 of the U.S. Code, Part 1, Chapter 13, Section 241 - Conspiracy against rights
- Section 242 - Deprivation of rights under color of law
- Section 244 - Conspiracy against a member of the U.S. armed forces
- Section 247 - Obstruction of persons in the free exercise of religious beliefs
- Title 18, Section 1113 - Attempt to commit murder
- Section 1117 - Conspiracy to murder
- Title 18, Chapter 109, Section 2236 - Searches without warrant
- Title 18, Chapter 73, Section 1506 - Theft or alteration of Court record or process
- Title 18, Chapter 19, Section 373 - Solicitation to commit a crime of violence
- Title 18, Chapter 113C, section 2340A - Torture, as defined in section 2340

STATEMENT OF THE CASE

1.) This civil class action complaint is brought pursuant to Title 18 of The United States Civil Statue Code for conspiracy against rights, deprivation of rights under color of law, discrimination against person wearing uniform of armed forces, obstruction of persons in the free exercise of religious beliefs, attempt to commit murder or manslaughter, conspiracy to murder, searches without warrant, theft or alteration of Court record or process, solicitation to commit a crime of violence, and torture.

2.) This civil complaint has met all the prerequisites to a class action as stated in Federal Rules of Civil Procedure Rule 23(a)(1-4) and is class action maintainable as defined in Federal Rules of Civil Procedure Rule 23(b)(3).

3.) The petitioner, Robert Christopher Kettenburg, is a citizen of The United States of America and resides at 6594 Dysinger Road #17, Lockport, New York, 14094. Phone: (716) 433-8611. His address on the internet is: http://www.angelfire.com/ny5/robkettenburg

4.) The respondent is The Federal Government of the United States of America, located in Washington D.C.

5.) Petitioner was employed by the respondents as an active duty soldier from October 2, 1984, until December 1, 1987. The petitioner was released from active duty on December 1, 1987, enrolled in college, and remained in an inactive reserve status until October 1, 1992, the date of his honorable discharge.

6.) Respondents conspired against the right's of the petitioner, deprived the petitioner of his rights, discriminated against the petitioner while he was still a member of the U.S. armed forces, obstructed the petitioner in his free excercise of religious beliefs, conspired to murder the petitioner repeatedly, attempted to murder the petitioner repeatedly, searched the petitioner's premis

es repeatedly without warrant, altered or stole the petitioner's Court records, solicited people to commit acts of violence against the petitioner repeatedly, and have in fact, tortured the petitioner as defined in Title 18 U.S.C., Chapter 113C, section 2340, as described in this complaint beginning on July 26, 1988, and still continue to this day.

7.) ***Class Action Allegations:***

On July 26th, 1988, petitioner was involved in a car wreck that nearly ended his life. When brought to the University of Louisville Hospital to repair a ruptured spleen, petitioner was placed in surgery and cut open. From that day forward petitioner, who has never committed any crimes nor been arrested, has in fact been a federal prisoner. Everywhere petitioner goes respondents follow him around, dump trash on his name and reputation, commit defamation of character, libel, slander, conspire against him, pick fights with him, torture him, break and enter into his dwelling and conduct illegal search and seizures, even conspire and attempt to murder him. All through 7 years of college, every job he has had since that time, and every place he has lived since that time.

Petitioner remembers watching on TV shortly after the Oklahoma City Federal Building blew up in 1995 that Connie Chung of CBS Evening News said: "Timothy McVeigh is so crazy, he said he blew up the federal building because the government created an accident to stick him in surgery so they could place a microchip in him for tracking purposes - he must be crazy..." Or words to that effect. In 1999 petitioner located and contacted Timothy McVeigh's lawyer, Houston Attorney Richard Burr (713) 523-2299, and asked him why McVeigh blew up the federal building. Mr. Burr said he couldn't tell petitioner. After lengthy discussion in which petitioner told Mr. Burr everything that had been going on in his life since the day of the accident, Mr. Burr asked petitioner if he had ever had any surgery performed on him. Petitioner informed him of the July 26th, 1988 car wreck. Mr. Burr informed petitioner that he may have a microchip

inside him. Petitioner asks Court: Why would Houston Attorney Richard Burr (McVeigh's lawyer) say such a thing?

Petitioner flew down to Houston, Texas, on January 5th, 2000, to receive a CAT scan (computer axial tomography) and find out for certain whether or not he had a metallic chip inside him. The results of the CAT scan can be viewed as **Exhibit C** (App. 21-22). Pictures of the July 26, 1988, wreck itself can be viewed as **Exhibit A** (App. 18), and petitioner's medical records are **Exhibit B** (App. 19-20). Petitioner points to the first page of his medical records where CODES are displayed. This is consistent with the alpha-numeric bar code technology used in microchip transponders. When a person implanted with a microchip passes through a bar code scanner, seen in virtually every store in America, along with the Clinton Township, Michigan, FBI office on Garfield Avenue, the scanners detect the chip and read off a set of codes. The scanners frequently set off alarms as well, sometimes silent. Petitioner seems to set off alarms everywhere he goes. These codes represent supposed crimes that petitioner has never formally been charged with, a direct violation of the 5th, 6th, and 14th Amendments to the U.S. Constitution. The last page of petitioner's medical records has his surgeon stating that sponges, needles, and surgical instruments all visually accounted for at the end of the medical procedure. Petitioner would also love to show this Court an X-ray of his chest with a 1 1/2 inch cylindrical object imbedded in it, but it, along with various other personal belongings, including Court records related to this petition, were stolen from his dwelling. Most notably, Western District of Kentucky at Louisville's Judge Thomas B. Russell's opinion dismissing petitioner's original complaint because the aformentioned technology was imaginary. Petitioner would like to point out that approximately 2 years after said automobile accident occurred, he started visiting Mueller Chiropractic center at Dupont Square in Louisville, Kentucky, in an attempt to alleviate his constant back pain. Initially, the chiropracter, Craig Mueller, had to take x-rays of petitioner's chest to evaluate the condition of his spine. Dr. Mueller hung x-rays of petitioner's chest in front of petitioner and then asked petitioner:

"Do you know what this 1 1/2 inch cylindrical object embedded in your chest is?" Dr. Mueller also pointed out that all of the disks in our spinal cord correspond to an organ in the human body, and that the disk that corresponds to petitioner's spleen has been permanently knocked out of place.

The petitioner's 6th Amendment Right's have been utterly desecrated. He is repeatedly punished for crimes he has never committed, let alone never been charged with, and denied his basic freedoms: life, liberty, and the pursuit of happiness. How can any human pursue happiness when respondents follow petitioner around every where he goes, dumps trash all over his name and reputation, commit defamation of character, libel, slander, solicit others to commit acts of violence against him, obstruct him in his free excersise of religious beliefs, break and enter into his dwelling when they know he isin't there for illegal search and seizure practices, conspire and attempt to murder him for obvious reasons, and torture him, as defined in Title 18 of the U.S. Code, Part I, Chapter 113C, Section 2340. Respondent also wishes to point out that this incredibly brutal act of violence made to look like an accident was carried out against him 7 months after being released from active duty as a U.S. Army soldier, while he was a freshman at The University of Louisville, but still a member of the U.S. Armed Forces, in an inactive reserve status.

REASONS FOR GRANTING THE PETITION

The reasons for granting this petition should be obvious to the Court. Previous Courts have dismissed petitioner's allegations because the technology described in his complaint is 'fanciful,' or 'imaginary.' Applied Digital Solutions of Palm Beach, Florida, has a patent for stated technology and is ADSX on the NASDAQ stock exchange. The Destron-Fearing Corporation of St. Paul, Minnesota, also mass produces said 'imaginary & fanciful' technology that can be viewed by anyone with an internet connection at www.destron-fearing.com

Petitioner points to Rule 10c of this Court: "...a U.S. Court of Appeals has decided an important question of federal law that has not been, but should be, settled by this Court..." Ultimately, this petition should be granted because the respondents are guilty of a haneous crime that could have only been thought up by very sick individuals. Carrying out incredibly brutal acts of violence made to look like accidents against honorably discharged soldiers who have never been charged with, nor committed any crimes, for the purposes of placing us in surgery, so they can stick microchips in us for tracking purposes, is in violation of the 5th, 6th, and 14th Amendments to the U.S. Constitution. What entails afterwards violates the 1st and 4th Amendments, and approximately ten additional statues in the U.S. Code that the petitioner is consciously aware of, probably more.

Petitioner has provided this Court with copies of his medical records stating the organ damage he suffered from aforementioned car wreck was internal and there were no external wounds to his torso when brought into respondent's hospital on July 26, 1988, ruling out the possibilty that the metallic object imbedded in his chest is a car part from said vehicular wreck. The last page of said records state that all surgical instruments, sponges, and needles were visually accounted for after they stapled his chest back together. X-Rays of petitioner's chest reveal a 1 1/2 inch cylindrical object imbedded in him, shaped like a can of soda, just behind the top of the foot long scar up the middle of his chest. The CAT (computer axial tomography) scan results, signed by a

medical doctor, are included in this petition, and they clearly state that there is a metallic foreign body embedded in his chest.

CONCLUSION

In concluding, why would Timothy McVeigh's lawyer, Houston Attorney Richard Burr (713) 523-2299, advise petitioner to receive a CAT scan in 1999 because he may have a microchip implanted in him after undergoing surgery in 1988? Why would he say such a thing? And what were the results of said CAT scan? Petitioner prays that this Court do the right thing after viewing the results from his motion for discovery. Namely, that all the soldiers who have been affected by the respondents in the manner described in this petition be notified as to what our government has done to us. Petitioner then wants respondents to pay for the surgery to have all of these implants removed at a hospital of the soldiers' choice. And finally, for all of our pain, suffering, humiliation, and ANOTHER trip to the hospital, for MORE surgery, petitioner asks this Court to make the respondents pay a sum of no less than $2 million dollars to each of the soldiers affected in the manner described in this petition, most of whom are probably unaware of what our government (the respondent) has done to us.

Respectfully Submitted,

Robert Christopher Kettenburg Pro Se
6594 Dysinger Road #17
Lockport, New York 14094
(716) 433-8611
http://www.angelfire.com/ny5/robkettenburg
November 4, 2002

MANDATE

U.S. COURT OF APPEALS Appellate Court No. 01-6166
FOR THE SECOND CIRCUIT

ss.

U.S. District Court for the District Court No. 01-CV-0339
Western District of NewYork at Buffalo

_____At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on th 30th Day of May, Two thousand two,

Present:
Hon. Chester J. Straub,
Hon. Sonia Sotomayor,
Circuit Judges.
Hon. Richard W. Goldberg,
Judge, U.S. Court of Int'l Trade,
Sitting by Designation.

U.S. Court of Appeals
FILED
May 30, 2002
Roseann B. MacKechnie, Clerk
Second Circuit

Robert Kettenburg,

Plaintiff-Appellant,

v. 01-6166

Federal Government,

Defendant-Appellee.

Appellee has filed a motion to dismiss plaintiff-appellant's appeal. Upon due consideration, it is ORDERED that the motion is granted, and the appeal is dismissed, because it lacks and arguable basis in fact or law. See Neitzke v. Williams, 490 U.S. 319, 325 (1989); 28 U.S.C. Section

1915(e). Accordingly, appellant's motions for "Relief" and "Discovery/Production of Documents" are denied as moot.

A TRUE COPY

/s/ Roseann B. MacKechnie, CLERK
by Eddie Andino, DEPUTY CLERK

May 30, 2002

FOR THE COURT:
Roseann B. Mackechnie, Clerk
By: Lucille Carr

App. 3

DECISION AND ORDER

U.S. District Court for the Western

District of NewYork at Buffalo

No. 01-CV0339

Robert Christopher Kettenburg,
Plaintiff,

-v-

The Federal Government of The United States of America, Departments of Defense and Justice,
Defendant.

FILED
U.S. District Court
W.D.N.Y. Buffalo
2001 JUN-8 PM4:29

Plaintiff Robert Christopher Kettenburg has filed this *pro se* action seeking relief under 42 U.S.C. Section 1983 (Docket No. 1) and has requested permission to proceed *in forma pauperis* (Docket No. 2). Plaintiff has also filed a number of other motions (Docket Nos. 3-7). Plaintiff claims that the federal government, apparently assisted by numerous civilians, including family members and one-time friends of Kettenburg's, have engaged in a long-running conspiracy to murder and otherwise harm him, which began with a 1988 automobile accident in which plaintiff was seriously injured. Plaintiff alleges that a microchip was placed in his body at that time which causes him to be visible to surveillance by all bar code readers.

Because plaintiff has met the statutory requirements of 28 U.S.C. Section 1915(a), plaintiff is granted permission to proceed *in forma pauperis*. Section 1915(e)(2)(B) of 28 U.S.C. provides that the Court shall dismiss a case in which *in forma pauperis* status has been granted if, at any time, the Court determines that the action (i) is frivolous or malicious; (ii) fails to state a claim upon

which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief. In evaluating the complaint, the Court must accept as true all factual allegations and must draw all inferences in plaintiff's favor. *See* King v. Simpson, 189 F.3d 284, 287 (2d Cir. 1999). Dismissal is not appropriate "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 45-46, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957). "This rule applies with particular force where the plaintiff alleges civil rights violations or where the complaint is submitted pro se." Chance v. Armstrong, 143 F.3d 698, 701 (2d Cir. 1998).

Based on its evaluation of the complaint, the Court finds that plaintiff's claims must be dismissed pursuant to 28 U.S.C. Section 1915(e)(2)(B)(i) because they are predicated on indisputably baseless legal theories. In Neitzke v. Williams, 490 U.S. 319, 324 (1989), the U.S. Supreme Court cited to what is now 28 U.S.C. Section 1915(e):

> Section 1915[e] is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants gener ally do not initiate because of the costs of bringing suits and because of the threat of sanctions for bring ing vexatious suits under Federal Rule of Civil Procedure 11. To this end, the statue accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless. Examples of the former class are claims against which it is clear that the defendants are immune from suit ...and claims of infringement of a legal interest which clearly does not exist.... Examples of the latter class are claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar.

Id. at 327-28, 1833 (citation omitted). The U.S. Supreme Court elaborated on this "power to pierce the veil of the complaint's factual allegations" a few years later:

> [T]he Section 1915[e] frivolousness determination, frequently made *sua sponte* before the defendant has even been asked to file an answer, cannot serve as a factfinding process for the resolution of disputed facts. ... [A] court may dismiss a claim as factually frivolous only if the facts alleged are "clearly base less," a category encompassing allegations that are "fanciful," "fantastic," and "delusional." As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to con tradict them: Denton v. Hernandez, 504 U.S. 25, 32-33 (1992) (quoting Neitzke, 490 U.S. at 327).

Here, the complaint is in essence composed of the type of "fantastic," "delusional" and "incredible" allegations that warrant dismissal as factually frivolous. Accordingly, this action is hereby dismissed under 28 U.S.C. Section 1915(e)(B)(i). Moreover, while the usual practice is to allow leave to replead a deficient complaint, see Fed.R.Civ.P. 15(a); see also Ronzani v. Sanofi, S.A., 899 F.2d 195, 198 (2d Cir. 1990), especially where a complaint has been submitted pro se, Davidson v. Flynn, 32 F.3d 27, 31 (2d Cir. 1994), such leave may be denied where amendment would be futile, such as in this case. Plaintiff's motions (Docket Nos. 3-7) are denied as moot.

IT IS ORDERED

/s/ Hon. Richard J. Arcara, United States District Judge
Dated: June 8, 2001

ORDER

U.S. District Court for the Western - District Court
No. 3:00CV228R District of Kentucky at Louisville

Robert Christopher Kettenburg,
Plaintiff,

-v-

ENTERED
August 15, 2000
Jeffrey A. Apperson, Clerk
By Susan Bridges
Deputy Clerk

The Federal Government of
The United States of America
and The University of Louisville
Defendants.

For the reasons set forth in the Memorandum Opinion entered this date, IT IS ORDERED that the instant action is DISMISSED for failure to state a claim upon which relief can be granted, and for being factually frivolous.

There being no just reason for delay, this is a final Order. Leave to appeal to the Court of Appeals *in forma pauperis* in DENIED pursuant to 28 U.S.C. Section 1915(a)(3) because such an appeal would not present a genuine and substantial issue, such that it would not be taken in good faith. Further requests to appeal *in forma pauperis* should be directed to the United States Court of Appeals for the Sixth Circuit pursuant to Fed.R.App.P.24.

/s/ Thomas B. Russell, Judge
United States District Court

August 11, 2000
cc: Pro Se Plaintiff

ORDER

United States Court of Appeals for
Appellate Court No. 00-6254 The Sixth Circuit

Robert Christopher Kettenburg,
Plaintiff-Appellant,

-v-

FILED
June 7, 2001
Leonard Green, Clerk

The Federal Government of The
United States of America and
The University of Louisville
Defendants-Appellees.

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
Sixth Circuit Rule 28(g) limits citation to specific situations. Please see Rule 28(g) before citing in a proceeding in a court in the Sixth Circuit! If cited, a copy must be served on other parties and the Court.
This notice is to be prominently displayed if this decision is reproduced.

Before: GUY, BOGGS, and GILMAN, Circuit Judges.

Pro Se Michigan resident Robert Christopher Kettenburg appeals adistrict court judgement that dismissed his civil suit as frivolous. The case has been referred to this panel pursuant to Rule 34(j)(1), Rules of the Sixth Circuit. We unanimously agree that oral argument is not needed.

Fed.R.App.P.34(a).

Kettenburg sued the University of Louisville and the United States government. He claimed, among other things, that the government caused him to be in a serious car accident and then arranged to have a "micro computer chip" placed inside his chest when he received surgery at the hospital at the university.

The district court dismissed Kettenburg's suit as factually frivolous pursuant to 28 U.S.C. Section 1915.

On appeal, Kettenburg iterates his claims against the defendants and moves this court to expedite the appeal and to research and verify the factual basis for his claims on the world-wide web and through telephonic inquiries to the "National Security Agency." The defendants have not been served and have not filed a brief.

We review de novo a judgement dismissing a suit under Section 1915. *See McGore v. Wrigglesworth*, 114 F.3d 601, 604 (6th Cir. 1997). A complaint is frivolous where it lacks an arguable basiseither in law or in fact. *See Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

Upon review, we conclude that the district court properly considered and rejected Kettenburg's claims. *See Denton v. Hernandez*, 504 U.S. 25, 32 (1992); *Neitzke*, 490 U.S. at 327-28; *Lawler v. Marshall*, 898 F.2d 1196, 1199 (6th Cir. 1990).

Accordingly, all pending motions are denied, and the district court's judgement is affirmed for the reasons stated by that court in its August 15, 2000, opinion and order. Rule 34(j)(2)(C), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT
/s/ Leonard Green, Clerk

U.S. COURT OF APPEALS
Appellate Court No. 01-6166
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on th 14th Day of August, Two thousand two,

Present:
Hon. Chester J. Straub,
Hon. Sonia Sotomayor,
Circuit Judges.
Hon. Richard W. Goldberg,
Judge, U.S. Court of Int'l Trade,
Sitting by Designation.

U.S. Court of Appeals
FILED
August 14, 2002
Roseann B. MacKechnie, Clerk
Second Circuit

Robert Kettenburg,

Plaintiff-Appellant,

v.

01-6166

Federal Government,

Defendant-Appellee.

A petition for panel rehearing having been filed herein by Robert Christopher Kettenburg, Upon consideration thereof, it is Ordered that said petition be and it hereby is **DENIED**.

August 14, 2002

FOR THE COURT:
/s/ Roseann B. Mackechnie, Clerk
By: Arthur M. Heller, Administrative Attorney

ORDER

United States Court of Appeals for
Appellate Court No. 00-6254 The Sixth Circuit

Robert Christopher Kettenburg,
Plaintiff-Appellant,

-v-

FILED
July 9, 2001
Leonard Green, Clerk

The Federal Government of The United States of America and The University of Louisville
Defendants-Appellees.

Before: GUY, BOGGS, and GILMAN, Circuit Judges.

Pro Se Michigan resident Robert Christopher Kettenburg petitions the panel to rehear the June 7, 2001, order that affirmed the district court's dismissal of his civil suit as frivolous.

Upon Consideration, we conclude that the court did not misapprehend or overlook any point of law or fact in affirming the district court's judgement. *See* Fed. R. App. P. 40(a).

We DENY Kettenburg's petition for rehearing.

ENTERED BY ORDER OF THE COURT
/s/ Leonard Green, Clerk

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment I
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Amendment IV
The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Amendment V
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI
In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Amendment XIV
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

Title 18 of the U.S. Code, Sec. 241 - Conspiracy against rights
If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured - they shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Title 18 of the U.S. Code, Sec. 242 - Deprivation of rights under color of law
Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the

punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Title 18 of the U.S. Code, Sec. 244 - Discrimination against person wearing uniform of armed forces

Whoever, being a proprietor, manager, or employee of a theater or other public place of entertainment or amusement in the District of Columbia, or in any Territory, or Possession of the United States, causes any person wearing the uniform of any of the armed forces of the United States to be discriminated against because of that uniform, shall be fined under this title.

Title 18 of the U.S. Code, Sec. 247 - Damage to religious property; obstruction of persons in the free exercise of religious beliefs

(a) Whoever, in any of the circumstances referred to in subsection (b) of this section - (1) intentionally defaces, damages, or destroys any religious real property, because of the religious character of that property, or attempts to do so; or (2) intentionally obstructs, by force or threat of force, any person in the enjoyment of that person's free exercise of religious beliefs, or attempts to do so; shall be punished as provided in subsection (d). (b) The circumstances referred to in subsection (a) are that the offense is in or affects interstate or foreign commerce. (c) Whoever intentionally defaces, damages, or destroys any religious real property because of the race, color, or ethnic characteristics of any individual associated with that religious property, or attempts to do so, shall be

punished as provided in subsection (d). (d) The punishment for a violation of subsection (a) of this section shall be - (1) if death results from acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, a fine in accordance with this title and imprisonment for any term of years or for life, or both, or may be sentenced to death; (2) if bodily injury results to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this section, and the violation is by means of fire or an explosive, a fine under this title or imprisonment for not more that 40 years, or both; (3) if bodily injury to any person, including any public safety officer performing duties as a direct or proximate result of conduct prohibited by this section, results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, a fine in accordance with this title and imprisonment for not more than 20 years, or both; and (4) in any other case, a fine in accordance with this title and imprisonment for not more than one year, or both. (e) No prosecution of any offense described in this section shall be undertaken by the United States except upon the certification in writing of the Attorney General or his designee that in his judgment a prosecution by the United States is in the public interest and necessary to secure substantial justice. (f) As used in this section, the term "religious real property" means any church, synagogue, mosque, religious cemetery, or other religious real property, including fixtures or religious objects contained within a place of religious worship. (g) No person shall be prosecuted, tried, or punished for any noncapital offense under this section unless the indictment is found or the information is instituted not later than 7 years after the date on which the offense was committed.

Title 18 of the U.S. Code, Sec. 1113 - Attempt to commit murder or manslaughter

Except as provided in section 113 of this title, whoever, within the special maritime and territorial jurisdiction of the United States,

attempts to commit murder or manslaughter, shall, for an attempt to commit murder be imprisoned not more than twenty years or fined under this title, or both, and for an attempt to commit manslaughter be imprisoned not more than seven years or fined under this title, or both.

Title 18 of the U.S. Code, Sec. 1117 - Conspiracy to murder

If two or more persons conspire to violate section 1111, 1114, 1116, or 1119 of this title, and one or more of such persons do any overt act to effect the object of the conspiracy, each shall be punished by imprisonment for any term of years or for life.

Title 18 of the U.S. Code, Sec. 2236 - Searches without warrant

Whoever, being an officer, agent, or employee of the United States or any department or agency thereof, engaged in the enforcement of any law of the United States, searches any private dwelling used and occupied as such dwelling without a warrant directing such search, or maliciously and without reasonable cause searches any other building or property without a search warrant, shall be fined for a first offense not more than $1,000; and, for a subsequent offense, shall be fined under this title or imprisoned not more than one year, or both. This section shall not apply to any person - (a) serving a warrant of arrest; or (b) arresting or attempting to arrest a person committing or attempting to commit an offense in his presence, or who has committed or is suspected on reasonable grounds of having committed a felony; or (c) making a search at the request or invitation or with the consent of the occupant of the premises.

Title 18 of the U.S. Code, Sec. 1506 - Theft or alteration of record or process

Whoever feloniously steals, takes away, alters, falsifies, or otherwise avoids any record, writ, process, or other proceeding, in any court of the United States, whereby any judgment is reversed, made void, or does not take effect; or, whoever acknowledges, or

procures to be acknowledged in any such court, any recognizance, bail, or judgment, in the name of any other person not privy or consenting to the same - shall be fined under this title or imprisoned not more than five years, or both.

Title 18 of the U.S. Code, Sec. 373 - Solicitation to commit a crime of violence

(a) Whoever, with intent that another person engage in conduct constituting a felony that has as an element the use, attempted use, or threatened use of physical force against property or against the person of another in violation of the laws of the United States, and under circumstances strongly corroborative of that intent, solicits, commands, induces, or otherwise endeavors to persuade such other person to engage in such conduct, shall be imprisoned not more than one-half the maximum term of imprisonment or (notwithstanding section 3571) fined not more than one-half of the maximum fine prescribed for the punishment of the crime solicited, or both; or if the crime solicited is punishable by life imprisonment or death, shall be imprisoned for not more than twenty years. (b) It is an affirmative defense to a prosecution under this section that, under circumstances manifesting a voluntary and complete renunciation of his criminal intent, the defendant prevented the commission of the crime solicited. A renunciation is not "voluntary and complete" if it is motivated in whole or in part by a decision to postpone the commission of the crime until another time or to substitute another victim or another but similar objective. If the defendant raises the affirmative defense at trial, the defendant has the burden of proving the defense by a preponderance of the evidence. (c) It is not a defense to a prosecution under this section that the person solicited could not be convicted of the crime because he lacked the state of mind required for its commission, because he was incompetent or irresponsible, or because he is immune from prosecution or is not subject to prosecution.

Title 18 of the U.S. Code, Sec. 2340A - Torture

(a) Offense - Whoever outside the United States commits or

attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life. (b) Jurisdiction - There is jurisdiction over the activity prohibited in subsection (a) if - (1) the alleged offender is a national of the United States; or (2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.

Title 18 of the U.S. Code, Sec. 2340 - Definition of Torture
As used in this chapter - (1) "torture" means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control; (2) "severe mental pain or suffering" means the prolonged mental harm caused by or resulting from - (A) the intentional infliction or threatened infliction of severe physical pain or suffering; (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality; (C) the threat of imminent death; or (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and (3) "United States" includes all areas under the jurisdiction of the United States including any of the places described in sections 5 and 7 of this title and section 46501(2) of title 49.

EXHIBIT A

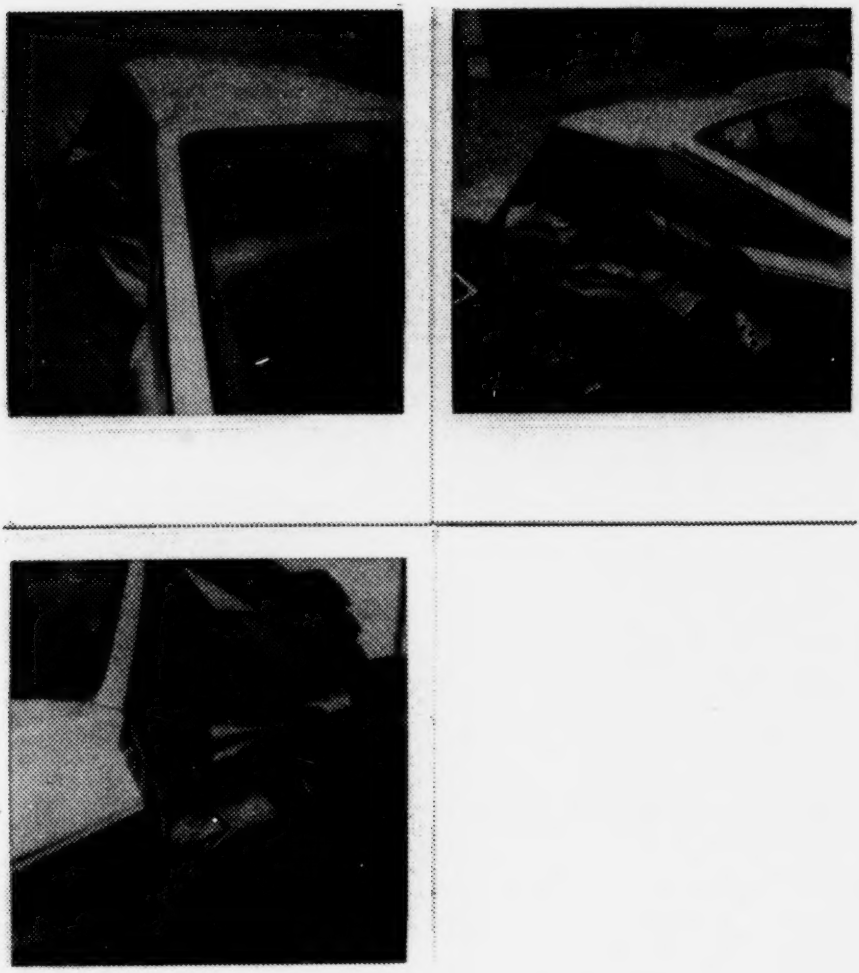
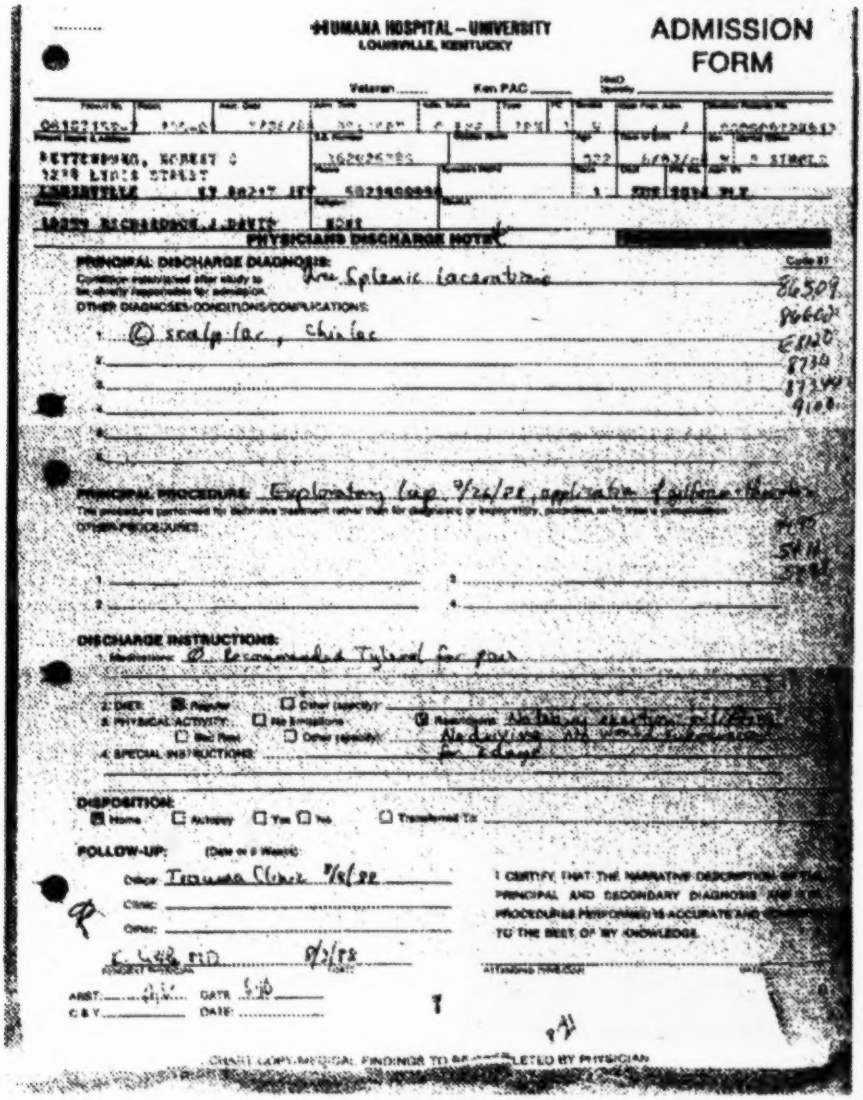


EXHIBIT B



HUMANA HOSPITAL – UNIVERSITY
LOUISVILLE, KENTUCKY

ADMISSION FORM

Veteran ____ Kim PAC ____

PHYSICIANS DISCHARGE NOTES

PRINCIPAL DISCHARGE DIAGNOSIS: Cellulitis lacerations

OTHER DIAGNOSES/CONDITIONS/COMPLICATIONS:

1. ② scalp lac, chin lac

PRINCIPAL PROCEDURE: Exploratory lap 9/26/22, application of splint

OTHER PROCEDURES:

DISCHARGE INSTRUCTIONS:

1. Medications: ① recommended Tylenol for pain

2. DIET: ☒ Regular ☐ Other (specify):

3. PHYSICAL ACTIVITY: ☐ No Restrictions ☐ Bed Rest ☐ Other (specify):

4. SPECIAL INSTRUCTIONS:

DISPOSITION: ☒ Home ☐ Autopsy ☐ Yes ☐ No ☐ Transferred To:

FOLLOW-UP: (Date in 2 Weeks)

Other Trauma Clinic 9/26/22

Clinic:

Other:

I CERTIFY THAT THE NARRATIVE DESCRIPTION OF THE PRINCIPAL AND SECONDARY DIAGNOSIS AND PROCEDURES PERFORMED IS ACCURATE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

ATTENDING PHYSICIAN

ASST. ____ DATE ____

C & Y ____ DATE ____

CHART COPY-MEDICAL FINDINGS TO BE COMPLETED BY PHYSICIAN

EXHIBIT B

HUMANA HOSPITAL-UNIVERSITY OF LOUISVILLE
LOUISVILLE, KY
OPERATIVE NOTE

PATIENT NAME: KETTENBURG, ROBERT
PAGE: 2
MEDICAL RECORD NUMBER: 724912

hematomas in the area. The pancreas felt normal with no injuries. The small bowel was run and the mesentery was checked. The large intestine was also manually run and explored. Both of these were normal without evidence of injury. The pelvis was also explored and there was small blood from the previous injuries with no injuries to any pelvic organs.

Attention was again turned to the right upper quadrant and this was more fully explored and no injuries were noted. In the left upper quadrant, the laparotomy pads were removed. The posterior and inferior attachments of the spleen to the kidney and to the colon were lysed and sharply divided and the spleen was mobilized into the wound. There were a large number of clots present around the spleen. These were removed with ring forceps and once adequate mobilized, the spleen was inspected. There was a 2 cm. non-bleeding laceration present on the inferior surface. This did have clot overlying it. There also was a 4 cm. non-bleeding laceration present on the medial aspect, extending towards the hilum but not into the hilum. Again this demonstrated no active bleeding with clot overlying it. There was a small 1 cm. actively bleeding laceration present on the superior pole of the kidney posteriorly. Manual compression was applied here and Thrombin and gelfoam was also applied here. Pressure was held for 10 minutes and after that time, inspection was carried out. There was no active bleeding from this laceration after that. The other lacerations were also checked at that time and no bleeding was evident in any of the areas and therefore the spleen was returned to the left upper quadrant.

The area was copiously irrigated in the left upper quadrant with liter of normal saline and the irrigant aspirated. The end was this was clear with no evidence of bleeding. The remainder of the abdomen was irrigated with 2 liters of normal saline. It should be noted that during the exploration prior to the splenorrhaphy, the lesser sac was entered in the usual fashion and inspected. There was no damage to the posterior surface of the stomach or pancreas.

After copiously irrigating the abdominal cavity at the end of the procedure, the abdomen was closed using running 0 Prolene to approximate the fascia. Subcutaneous tissues were irrigated and sprayed with Neosporin spray and the skin was closed with staples. Sterile dressing was applied. The patient was brought out of the anesthesia and taken to the Recovery Room in stable condition. He tolerated the procedure well without intraoperative complications. Sponge, needle and instrument counts were correct at the end of the case.

BH /ldb
dd: 07/27/88
dt: 07/28/88
2-8484

S. HARRISCHF, M.D.
OPERATIVE NOTE

BEST AVAILABLE COPY

EXHIBIT C

18

RIVER OAKS IMAGING AND DIAGNOSTIC Exhibit C

PATIENT NAME
KETTENBERG, ROB

ACCOUNT NO
369901

RADIOLOGY NUMBER
277890

AT THE REQUEST OF
JOSEPH A. REILLY DC -SH-
3415 LOUISIANA ST
HOUSTON, TX 77002

DATE OF BIRTH
06-02-66

AGE/SEX
33/M

DATE OF SERVICE
01-05-00

THORACIC SPINE

FINDINGS:

There are twelve thoracic vertebral bodies. Images were taken without weight-bearing in a supine position. There is no detectable scoliosis and there are no fractures, blastic or lytic lesions. There is a normal anterior curvature of the thoracic spine. The intervertebral disc spaces are well maintained.

IMPRESSION:

Normal AP and lateral x-rays of the thoracic spine.

LUMBAR SPINE

AP and lateral x-rays of the lumbar spine show five nonrib-bearing lumbar-type vertebral bodies. The sacroiliac joints are intact. The lateral image shows straightening of the lumbar lordotic curvature with a flattened sacral angle. There is no spondylolisthesis and there is no indication of spondylolysis.

There is a spina bifida configuration of the posterior elements of S1.

IMPRESSION:

1. Nonspecific flattening of the lumbar lordotic curvature of the decreased sacral angle.
2. Apparent spina bifida configuration of the posterior elements of S1.
3. No metallic foreign bodies are noted in either the AP or lateral projections.

CT SCAN OF THE INFERIOR CHEST AND SUPERIOR ABDOMEN WITHOUT CONTRAST

TECHNIQUE: A modified technique was utilized at Dr. Reilly's request, extending from the level of

[redacted]

EXHIBIT C

19

Exhibit C

the thoracic aorta to the level of the iliac crests. Images were obtained at 6 mm intervals.

FINDINGS:

The surrounding subcutaneous adipose tissue is unremarkable.

The included osseous structures show no fracture, blastic or lytic lesions

The lungs and mediastinum are unremarkable and there are no cardiac or hilar abnormalities.

The liver, spleen, stomach, adrenal glands, pancreas, gallbladder and kidneys are within normal limits. The included segments of the large and small bowel are unremarkable as well.

There is no retroperitoneal or mesenteric adenopathy.

→ There is a small (3-4 mm) focal high attenuation structure located in the anterior soft tissues, apparently within the anterior rectus sheath, immediately adjacent to the anterior peritoneum, presumed to represent a small embedded metallic foreign body. This structure was not apparent on the AP x-ray of the lumbar spine and may represent an area of heterotopic or posttraumatic calcification and/or ossification.

No other abnormalities are noted in the remainder of the examination.

IMPRESSION:

The spinal canal is of normal diameter and configuration at every level, between the 4th thoracic vertebral body and the superior margin of the sacrum. There is no central spinal canal stenosis and there is no apparent intervertebral disc space bulging or protrusion.

Thank you for referring your patient to us,

Lawrence Hurdiss, M.D., D.A.B.R.
LH:cw
DD:1/5/00
DT:1/5/00

2900 RICHMOND AVENUE • HOUSTON, TEXAS 77098 • (713) 512-8000 •
FAX: (713) 512-8041

[redacted]

EXHIBIT D

Company to Sell ID-Only Computer Chip Implant

The Associated Press, April 4, 2002

WASHINGTON (AP) - A company plans to begin selling a computer ID chip that can be embedded beneath people's skin, now that the Food and Drug Administration has said it will not regulate the implant as long as it contains no medical data. Applied Digital Solutions Inc. designed the VeriChip - about the size of a grain of rice - to hold information that could be read with special electronic scanners. The company has touted the chip as a potential way to hold a person's medical records or security codes. Applied Digital had held off sales pending discussions with the FDA of whether an implanted chip would be considered a medical device. If the chip solely provides identification, it needs no FDA clearance, the agency confirmed Thursday - advice officials have long given others developing ID for tracking children, prisoners or workers with top-security clearances. But, "if they put medical records in, we would be concerned about the use," said the FDA's medical device chief, Dr. David Feigal, who made clear that the agency could step in at that point. If someone is unconscious in an emergency room and implanted medical records are outdated, that could be more dangerous than if doctors had no information, he said. Feigal urged companies considering such health-related implants to consult with the FDA. For now, the VeriChip will bear only an identification number, said David Hughes of Technology Sourcing International, a consulting firm helping Applied Digital in its discussions with the FDA. But that ID code could be cross-referenced with a database to detail any kind of information. The company said production would begin immediately. VeriChip emits a radio signal and has been derided by some for its "Big Brother" implications. Applied Digital has said it could prove invaluable in emergency situations when someone is either unconscious or cannot otherwise give information. VeriChip is expected to sell for about $200. A scanner used to read information con

tained in the chip would cost between $1,000 and $3,000. A doctor would insert the chip with a large needle-like device.

Humans to Receive ID Chips

Technology: Device implanted under skin will provide identification and medical information.

By DAVID STREITFELD, L.A. Times Staff Writer

Eight people will be injected with silicon chips Friday, making them scannable just like a jar of peanut butter in the supermarket checkout line. The miniature devices, about the size of a grain of rice, were developed by a Florida company. They will be targeted to families of Alzheimer's patients--one of the fastest growing groups in American society--as well as others who have complicated medical histories. "It's safety precaution," explained Nate Isaacson. The retired building contractor will enter his Fort Lauderdale doctor's office Friday as an 83-year-old with Alzheimer's. He'll leave it a cyborg, a man who is also a little bit of a computer. The chip will be put in Isaacson's upper back, effectively invisible unless a hand-held scanner is waved over it. The scanner uses a radio frequency to energize the dormant chip, which then transmits a signal containing an identification number. Information about Isaacson is cross-referenced under that number in a central computer registry. Emergency room personnel, for instance, could find out who Isaacson is and where he lives. They'd know that he is prone to forgetfulness, that has a pacemaker and is allergic to penicillin. "You never know what's going to happen when you go out the door," said Isaacson's wife, Micki. "Should something happen, he's never going to remember those things." **Applied Digital Solutions Inc., the maker of what it calls the VeriChip, says that it will soon have a prototype of a much more complex device, one that is able to receive GPS satellite signals and transmit a person's location.** It's a prospect deeply unsettling to privacy advocates, no matter how voluntary

It's a prospect deeply unsettling to privacy advocates, no matter how voluntary the process may initially appear. "Who gets to decide who gets chipped?" asked Marc Rotenberg, executive director of the Electronic Privacy Information Center. "Parents will decide that their kids should be implanted, or maybe their own aging parents. It's an easier way to manage someone, like putting a leash on a pet." Applied Digital, which says it has a waiting list of 4,000 to 5,000 people who want a VeriChip, plans to operate a "chipmobile" that visits Florida senior citizen's centers. An estimated 4 million people nationally have Alzheimer's, with more than 10% of them in Florida.

Not Just for Those With Alzheimer's

Jeffrey and Leslie Jacobs and their teenage son Derek, whose "chipping" will be a national media event, don't have problems with dementia. The Boca Raton, Fla., family has a mixture of ailments and interests: Jeffrey has been treated for Hodgkin's disease and suffers from other conditions for which he takes 16 medications, while Derek is allergic to certain antibiotics. Mostly, though, he's a computer buff who considers the procedure nifty. As for Leslie, she's merely hoping to feel more secure in an insecure world. A third group readying themselves for the simple outpatient procedure Friday are executives of Applied Digital, a publicly traded company based in Palm Beach. Even their publicist is doing it. Getting chipped is easy. Making it more useful than a piece of body art will be harder. "There are a lot of practical issues here, as well as ethical and privacy issues," said Mark Pafford, associate executive director of the Alzheimer's Assn.'s Southeast Florida chapter. "If it were me, I would use something tried and proven, like a ID bracelet or a necklace that has an 800 number. This VeriChip seems like it would inhibit someone being returned home in a timely fashion. Who knows how to look under someone's skin?"

Applied Digital says nearly all the major hospitals in the West Palm Beach area will be equipped with the scanners. Yet St. Mary's Medical Center, a major trauma center approached at ran

dom by a reporter, said no one had contacted that hospital. Isaacson's family says he has a bracelet. He also has a wallet with an ID. "The VeriChip is more of a 'God forbid,'" said Sherry Gottlieb, Isaacson's daughter. "You feel you have to have it, but hope you never need it." Applied Digital is charging $200 for a chip, plus a $10 monthly fee to store the information. As the first patients, Isaacson and the Jacobses are getting their VeriChips for free, but that's the only financial consideration they are receiving. Isaacson's doctor, while agreeing to perform the insertion, has some qualms about it. He consented to be interviewed but asked that his name not be revealed until Friday. While protests against the VeriChip have been minimal, neither the doctor nor Applied Digital are eager to see demonstrations. A few religious groups say the chips are "the mark of the Beast" referred to in the Bible. "I think this is going to be the cutting edge of the future, because quick information saves lives," Isaacson's doctor said. "I get calls 24 hours a day informing me that a patient has had a stroke or a heart attack and is in the hospital. I have to go to my office, get the chart, and then go to the hospital. All that takes time, while the patient is being treated with limited information." And yet this family practitioner doesn't see himself chipping any youthful patients. While he believes the procedure is safe and the chip can always be removed, he's worried about long-term liability. "You do something to a young person, you may be responsible for years afterwards. He may be carrying this chip for 70 or 80 years." Long before then--by the end of the year, in fact--the next generation of devices will be tested. **An embedded chip with GPS capabilities would be slightly larger than a quarter and require actual surgery to implant.** Unlike the VeriChip, it also would require Food and Drug Administration approval. That will slow down its U.S. introduction. "We believe we have solved the battery issue, which leaves the question of an antenna that can transmit through skin tissue," said Keith Bolton, Applied Digital's chief scientist. The devices will be powered by lithium ion batteries, which can be charged remotely from outside the body.

Interest in Device in Brazil and Mexico

Applied Digital says it has already received considerable interest in the VeriChip from both commercial and government sources in Brazil and Mexico, and expects the embedded system to be big wherever there is a big threat of kidnapping. The prospect of such sales is no doubt one reason Applied Digital stock, which traded as low as 11 cents in the last year, recently quadrupled to about $2. Corporate insiders were sellers of the stock before the recent run-up, which might indicate a lack of faith in the company's viability. The stock fell 6 cents to $2.01 on Wednesday on Nasdaq. Applied Digital is heavily indebted but says it will have actual earnings this quarter before interest, taxes and depreciation are accounted for.

http://www.latimes.com/news/nationworld/nation/la-050902chipped.story
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Hey fag breath!
by: jlucascpt (45/M/Kansas) 10/24/02 02:23 pm
Msg: 417 of 421

Oh Robbie!! You are the one who keeps claiming that you are oh so hot and tough, blah, blah, blah. If you think you can kick my ass, come on out and do it. If not, shut up, REMF. Your mouth seems to be writing checks your ass can't cash. Its not my fed buddies you need to worry about, I'm the fed you need to worry about, REMF.

(2)

Supreme Court, U.S.
FILED

02 930 OCT 8 2002

OFFICE OF THE CLERK

No._____

In The
Supreme Court of the United States of America

Robert Christopher Kettenburg, Petitioner

vs. ***Class Action***

The United States Federal Government, Respondents

On Petition for Writ of Certiorari to The United States Court of Appeals for the 2nd Circuit

SUPPLEMENTAL APPENDIX

Robert Christopher Kettenburg Pro Se, Petitioner
6594 Dysinger Road #17
Lockport, New York 14094
(716) 433-8611
http://www.angelfire.com/ny5/robkettenburg

APP

MEMORANDUM OPINION

U.S. District Court for the Western
District of Kentucky at Louisville

Civil Action No. 3:00CV228R

Robert Christopher Kettenburg,
Plaintiff,

-v-

The Federal Government of The United States of America and The University of Louisville,
Defendants.

ENTERED
August 15, 2000
Jeffrey A.Apperson, Clerk
By Susan Bridges
Deputy Clerk

This case presents Mr. Kettenburg's claim that the defendants conspired against him. The matter is before the Court for initial review. After examination of the pleadings, this Court has concluded that the claim is frivolous and fails to state a claim upon which relief can be granted.

Statement of Claim.

Mr. Kettenburg alleges that the United States of America conspired with University Hospital to intentionally involve him an automobile collision, arranging it to appear to be an accident. The purpose of this, according to Mr. Kettenburg, was to present an opportunity to perform surgery, during which defendants implanted in his chest a computer microchip that would identify him (falsely) as a pedophile. He asserts that this device allows defendants to monitor and harass him. Mr. Kettenburg states that the defendants have

attempted to lure him into Satanism, they have given him bad breath, they have made use of their surveillance to seduce his wife, and they have attempted to kill him on numerous occasions. He states, inter alia: Every time he steps into a restaurant his food is poisoned. Every time he steps into a bar his drink is poisoned. Every time he steps into a shopping mall or grocery store he is followed, harrassed, and treated very poorly. This is because law enforcement, as the Court is well aware, has placed sensor mechanisms in almost all of the shops and businesses across the country to detect the microcomputer chip that the defendants intentionally placed inside his chest through an act of brutal violence.

Complaint at page 4.

Discussion.

A complaint, or portion thereof, should be dismissed for failure to state a claim upon which relief may be granted only if it appears beyond doubt that plaintiff can prove no set of facts in support of the claim or claims that would entitle him to relief. See Hishon v. King & Spalding, 467 U.S. 69, 73 (1984), citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957). Ordinarily, in reviewing a complaint under this standard, the Court must accept the allegations contained in the complaint as true. Hospital Bldg. C. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976).

In Neitzke v. Williams, 490 U.S. 319, 327, 109 S.Ct. 1827, 1833 (1989), the Court referred to the power of a District Court to dismiss "claims describing fantastic or delusional scenarios, claims with which federal district judges are all too familiar." In Denton v. Hernandez, 504 U.S. 25, 112 S.Ct. 1728 (1992), the Court noted that an in

forma pauperis complaint may not be dismissed simply because the Court finds the allegations unlikely. However, a court may dismiss a claim as factually frivolous "when the facts alleged rise to the level of the irrational or the wholly incredible, whether or not there are judicially noticeable facts available to contradict them." Id. at 504 U.S. 32, 112 S.Ct. 1733. In McGore v. Wrigglesworth, 114 F.3d 601 (6th Cir. 1997), the United States Court of Appeals for the Sixth Circuit observed that the dismissal that was permitted by Denton was required by subsequent amendments to the pro se statute.

This principle of law has led to the dismissal of a claim that correctional personnel had placed voices inside a plaintiff's head. Morrison v. Martin, 755 F.Supp. 683 (E.D. N.C. 1990). Similarly, it calls for dismissal of this complaint. The technology described by plaintiff is altogether fanciful. Mr. Kettenburg may feel that people are watching him, but this is not sufficient to state a claim of the type he seeks to assert.

For the foregoing reasons, an order will enter dismissing the complaint as factually frivolous.

/s/ Thomas B. Russell, Judge
United States District Court

August 11, 2000
cc: Pro Se Plaintiff